

## **REMARKS/ARGUMENTS**

Per the conversation on May 12, 2009 with the Examiner regarding an amendment after final to perfect the application, Applicants have amended the claims by specifying the calculation of the time window as suggested by the Examiner. Claims 1-20 are pending in the present application. Claims 1, 2, 11 and 20 are amended. Claim 2 was amended to correct a clerical error in specifying “a client device” rather than “the client device.” Support for the claim amendments may be found in the claims themselves, in reference numeral 870 of Figure 8 of the drawings, and in the specification on page 16 lines 22-25, page 19 lines 14-16 and page 27 lines 1-3. Reconsideration of the claims is respectfully requested.

### **I. 35 U.S.C. § 101**

The Examiner has rejected claims 1-10 under 35 U.S.C. § 101 as being directed towards non-statutory subject matter. The Examiner states:

Claims 1-10 are rejected under 35 U.S.C. 101 based on Supreme Court precedent, and recent Federal Circuit decisions, the Office's guidance to examiners is that a § 101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63,70 (1972); Cochrane v. Deener, 94 U.S. 780,787-88 (1876).

An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state. Here, applicant's method steps, fail the first prong of the new Federal Circuit decision since they are not tied to another statutory class and can be performed without the use of a particular apparatus. Thus, claims 1-10 describe a method nominally tied, at best, to a data processing system, wherein no functional tie or transformation takes place..

Final Office Action of April 22, 2009 pp. 2-3.

Applicants have amended claim 1 to add statutory subject matter. Specifically, the claimed features are tied to processing in a data processing system as well as storing information in a database of the data processing system. Further, a request from a client device is transformed into a service guarantee stored in a database. The amended claim is in compliance and therefore, overcomes the Examiner's rejection.

## II. 35 U.S.C. § 102, Anticipation

The Examiner has rejected claims 1-20 under 35 U.S.C. § 102 as being anticipated by Walker et al. Method and Apparatus for the Sale of Airline-Specified Flight Tickets, U.S. Patent 5,897,620, (April 27, 1999), (hereinafter "Walker"). The Examiner states:

Regarding Claims 1, 11, and 20:

Walker discloses a system; a method -- in a data processing system; and computer program product (having a computer-readable recordable type media having computer-executable instructions stored thereon) for obtaining transportation services for traveling between a point of origin and a destination, (the computer executable instructions) comprising:

receiving a request for transportation services, including a departure date, from a client device to form requested transportation services ([Col. 2, lines 44-45], "system and method for receiving a request to purchase a ticket to travel"). See also ([Col. 1, line 22], "Presently, tickets offered for sale by the airlines specify information including an itinerary (e.g., origin/destination locations and dates for travel) together with a flight number and a flight time"). See also ([Col. 7, line 35] "The flight schedule database 240 of data storage device 225 contains flight information including the origin and destination locations together with a departure date");

receiving, from the client device, an identifier of an acceptable travel window, wherein the travel window identifies a maximum amount of time that a passenger is willing to spend traveling from the point of origin to the destination ([Col. 2, lines 44-47], "system and method for receiving a request to purchase a ticket to travel from a specified departure location to a specified destination location within a specified time range"); and

generating, by the data processing system, a guarantee of the requested transportation services, and providing the guarantee of the requested transportation services from a transportation provider based on the departure date and the identified acceptable travel window ([Col 2, lines 35-37], "transmitting a request to purchase a commitment for carriage corresponding to the special fare listing information; receiving a commitment for carriage"). See Also ([Col 5, lines 60-63], "the unspecified-time ticket represents a commitment for carriage (i.e., an obligation by the airline to provide a seat on a flight) for the requested itinerary"). See Also ([Col. 2, lines 44-47], "system and method for receiving a request to

purchase a ticket to travel from a specified departure location to a specified destination location within a specified time range"). See also ([Col. 7, line 35] "The flight schedule database 240 of data storage device 225 contains flight information including the origin and destination locations together with a departure date"); wherein:

providing the guarantee of the requested transportation services does not reserve a seat on any particular vehicle ([Col. 7, lines 5-8], "a generic" unspecified-time ticket may also be offered, which, in addition to not it specifying a flight number and flight time, would also not specify an airline.") See Also ([Abstract], "An unspecified-time airline ticket representing a purchased seat on a flight to be selected later, by the airlines, for a traveler-specified itinerary (e.g., NY to LA on March 3rd").

Final Office Action dated April 22, 2009, pp. 3-5.

A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). All limitations of the claimed invention must be considered when determining patentability. *In re Lowry*, 32 F.3d 1579, 1582, 32 U.S.P.Q.2d 1031, 1034 (Fed. Cir. 1994). Anticipation focuses on whether a claim reads on the product or process a prior art reference discloses, not on what the reference broadly teaches. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 218 U.S.P.Q. 781 (Fed. Cir. 1983). In this case, each and every feature of the presently claimed invention is not identically shown in the cited reference, arranged as they are in the claims.

Claim 1 is as follows:

1. A method, in a data processing system, for obtaining transportation services for traveling between a point of origin and a destination, the method comprising:

receiving a request for transportation services, including a departure date and a travel window, from a client device of the data processing system wherein the travel window is a sum of flight time for each leg and transfer time, that identifies a maximum amount of time, a passenger is willing to spend traveling from the point of origin to the destination to form requested transportation services;

receiving, from the client device of the data processing system, an identifier of an acceptable travel window;

generating, by the data processing system, a guarantee of the requested transportation services, wherein the guarantee represents the

requested travel services and includes an identifier stored in a database of the data processing system and

providing the guarantee of the requested transportation services from a transportation provider and the identifier, by the data processing system, based on the departure date and the identified acceptable travel window, to the client device, wherein providing the guarantee of the requested transportation services does not reserve a seat on any particular vehicle.

*Walker* does not anticipate claim 1 because *Walker* fails to teach every element of the claim identically shown in the single reference, arranged as they are in the claim, according to the standard of *In re Bond*. In particular, *Walker* fails to teach the feature of *receiving a request for transportation services, including a departure date and a travel window, from a client device of the data processing system wherein the travel window is a sum of flight time for each leg and transfer time, that identifies a maximum amount of time, a passenger is willing to spend traveling from the point of origin to the destination to form requested transportation services; receiving, from the client device of the data processing system, an identifier of an acceptable travel window; generating, by the data processing system, a guarantee of the requested transportation services, wherein the guarantee represents the requested travel services and includes an identifier stored in a database of the data processing system and providing the guarantee of the requested transportation services from a transportation provider and the identifier, by the data processing system, based on the departure date and the identified acceptable travel window, to the client device, wherein providing the guarantee of the requested transportation services does not reserve a seat on any particular vehicle.*

The Examiner disagrees and asserts portions of *Walker* in support of the rejection. *Walker* is directed toward a method and apparatus for the sale of airline-specified flight tickets.

With regard to the feature of *receiving a request for transportation services, including a departure date and a travel window, from a client device of the data processing system wherein the travel window is a sum of flight time for each leg and transfer time, that identifies a maximum amount of time, a passenger is willing to spend traveling from the point of origin to the destination to form requested transportation services*, *Walker* is asserted to teach the feature at:

receiving a request to purchase a ticket to travel from a specified departure location to a specified destination location within a specified time range;

*Walker*, col. 2 lines 44-47.

Presently, tickets offered for sale by the airlines specify information including an itinerary (e.g., origin/destination locations and dates for travel) together with a flight number and a flight time

*Walker*, col. 1 lines 22-25.

The flight schedule database 240 of data storage device 225 contains flight information including the origin and destination locations together with a departure date.

*Walker*, col. 7 lines 35-37.

*Walker* teaches receiving a request containing information including the origin and destination locations together with a departure date. Further, *Walker* teaches airlines specify information including an itinerary (e.g., origin/destination locations and dates for travel) together with a flight number and a flight time. *Walker* teaches a window of departure as in:

the wider the "window of departure" (e.g., 8 AM to 8 PM) associated with the special fare listing, the greater the discount.

*Walker*, col. 5 lines 11-13.

However, the window as shown applies to a departure time allowing for a flexible departure time. In contrast, the feature requires a travel window that is calculated as the sum of flight time for each leg and transfer time. The travel window identifies a maximum amount of time a passenger is willing to spend traveling from the point of origin to the destination. The combination of information provided by the teaching of *Walker* does not provide the information of the time window. Accordingly, *Walker* fails to teach the claimed feature.

With regard to the feature of *receiving, from the client device of the data processing system, an identifier of an acceptable travel window*, *Walker* is asserted to teach the feature in a previously cited portion. *Walker* teaches, in the cited portion, receiving a request to purchase a ticket to travel from a specified departure location to a specified destination location within a

specified time range. The time range as taught by *Walker* applies to the departure dates of travel as in:

traveler-specified itinerary including the origin and destination locations together with the travel dates

*Walker*, col. 4. lines 53-55.

Instead of an actual flight number and precise departure/arrival times, the alias flight record contains an alias flight number and time windows (e.g., 8:00 am to 11:00 am, "afternoon", etc.), respectively.

*Walker*, col. 16 lines 5-8.

*Walker* teaches providing information in the request but does not specify the time window of the claimed feature. *Walker* fails to teach calculation of a time window involving the duration of time to complete a flight leg and to include flight transfer time. *Walker* teaches a window applicable to a departure time.

In contrast, the time window of the feature is a value provided by the user in the request. Further, the value represents a calculation of the sum of the flight leg durations and the flight transfer time. Accordingly, the time window taught by *Walker* represents something completely different than the time window of the claimed feature. Therefore, *Walker* fails to teach the claimed feature.

With regard to the feature of *providing the guarantee of the requested transportation services from a transportation provider and the identifier, by the data processing system, based on the departure date and the identified acceptable travel window, to the client device, wherein providing the guarantee of the requested transportation services does not reserve a seat on any particular vehicle*, *Walker* is asserted to teach the feature at:

a "generic" unspecified-time ticket may also be offered, which, in addition to not specifying a flight number and flight time, would also not specify an airline.

*Walker*, col. 7 lines 5-8.

An unspecified-time airline ticket representing a purchased seat on a flight to be selected later, by the airlines, for a traveler-specified itinerary (e.g.,

NY to LA on March 3rd) is disclosed.

*Walker*, abstract.

*Walker* teaches a generic unspecified time ticket, however the ticket was not identified using the parameters of the time window of the claimed feature. The ticket as taught by *Walker* is therefore not the ticket of the claimed feature because *Walker* fails to teach the time window criteria of the claimed feature. *Walker* further teaches the flight is selected by the airline.

In contrast, in the claimed feature, the flight is selected by the user as further clarified in claim 2. Therefore, *Walker* fails to teach the claimed feature. Accordingly, *Walker* fails to teach the features of claim 1. Under the standard of *In re Bond*, therefore *Walker* fails to anticipate claim 1. Therefore, the features of claim 1 are distinguished over the teaching of *Walker*.

Claims 11 and 20 have similar features as claim 1 and are therefore also distinguished over the teaching of *Walker*. Since claims 2-10 and 12-19 depend from claims 1 and 11 respectively, the same distinctions between *Walker* and the claimed invention in claim 1 applies equally well for these claims. Additionally, claims 2-10 claim other additional combinations of features not suggested by the reference. Consequently, it is respectfully urged that the rejection of claims 1-20 have been overcome. Therefore, the rejection of claims 1-20 under 35 U.S.C. § 102 has been overcome.

Furthermore, *Walker* does not teach, suggest, or give any incentive to make the needed changes to reach the presently claimed invention. *Walker* actually teaches away from the presently claimed invention because it teaches a time window based on a departure time as opposed to a time window for maximum travel time a user is willing to endure as in the presently claimed invention. Absent the Examiner pointing out some teaching or incentive to implement *Walker* and the travel window of the claimed feature, one of ordinary skill in the art would not be led to modify *Walker* to reach the present invention when the reference is examined as a whole. Absent some teaching, suggestion, or incentive to modify *Walker* in this manner, the presently claimed invention can be reached only through an improper use of hindsight using the applicants' disclosure as a template to make the necessary changes to reach the claimed invention.

### **III. Conclusion**

The subject application is patentable over the cited references. Therefore, the subject application should now be in condition for allowance. Applicants invite the Examiner to call the undersigned at the below-listed telephone number if, in the opinion of the Examiner, a telephone conference would expedite or aid the prosecution of this application.

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Respectfully submitted,

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